

IN RE: Request of Beulah Solar, LLC for  
Modification of Interconnection  
Agreement with South Carolina Electric  
& Gas Company

**MOTION  
FOR PROTECTIVE ORDER**

# INTRODUCTION

Beulah Solar, LLC (“Beulah Solar”) and Eastover Solar LLC (“Eastover Solar”), (collectively as, “Beulah Solar/Eastover Solar”), each have Requests for Modifications pending in this Docket. Eastover Solar was allowed to Intervene and participate in this Docket, by Commission Order No. 2019-92, dated January 30, 2019. Both Requests for Modifications are short and relatively straightforward submissions addressing South Carolina Electric & Gas Company’s (hereinafter the “Company”), inclusion of “curtailment language” in the Company’s Interconnection Agreements (“IAs”), **which language has not been approved by this Commission.** In response to the Requests for Modifications, and well before the initial deadlines in this Commission’s procedural order, the Company has served Discovery Requests, which are comprised of unreasonable and burdensome requests seemingly designed to punish Beulah Solar/Eastover Solar for filing the Requests for Modifications. Beulah Solar/Eastover Solar respectfully request that the Commission enter a Protective Order regarding the Company’s overly broad and unduly burdensome discovery requests to Beulah Solar/Eastover Solar.

### The Company's Discovery Requests.

The Company's Discovery Requests are comprised of two sets of discovery propounded to each Movant. The first set, served February 5, 2019, included 13 Requests for Admissions, 24 Interrogatories, and 20 Requests for Production of documents propounded to Beulah Solar. On February 18, 2019, before the time to respond to the First Set of Discovery Requests had expired, the Company served a Second Set of Discovery Requests to Beulah Solar. The Second Set included 2 additional Requests for Admissions, 3 additional Interrogatories, and 4 additional Request for Production, propounded to Beulah Solar. Additionally, on February 12, 2019, the Company served 13 Requests for Admissions, 27 Interrogatories and 21 Requests for Production propounded to Eastover Solar. The Discovery Requests are boilerplate, broadly drawn, and harassing in that, for example, they frequently request identification or production of "all" communications or items related to the projects at issue. They appear plainly intended to impair Beulah Solar/Eastover Solar's ability to meet the deadlines in this Commission's procedural order. Indeed, these overly burdensome Discovery Requests were propounded before Beulah Solar/Eastover Solar had the opportunity to submit Prefiled Testimony, to which discovery would presumably relate.

Motion to Hold Docket in Abeyance.

Also, Beulah Solar/Eastover Solar e-filed a “Motion to Hold Docket in Abeyance”, in this Docket on February 21, 2019. If the relief in that pending Motion is granted, all discovery in this Docket will be held in abeyance. Accordingly, Beulah Solar/Eastover Solar seek this Motion for Protective Order concerning very expensive, time consuming, burdensome, overly broad and unnecessary Discovery Requests from the Company which are described in detail hereinbelow.

Stakeholder Process is Scheduled.

A stakeholder process to address solar developers’ concerns about, *inter alia*, curtailment language, has recently been established. The stakeholder process is between the South Carolina Solar Business Alliance, Inc. (“SCSBA”), Dominion and the Company and the stakeholder process is to be facilitated by the South Carolina Office of Regulatory Staff, (“ORS”). The stakeholder process is memorialized in a Settlement Agreement dated November 30, 2018, which Agreement was approved by this Commission. The **initial stakeholder process meeting has been scheduled for March 7, 2019** and attendance at the initial meeting has been confirmed by SCSBA, ORS, and the Company. The Discovery Requests in dispute will likely be rendered moot by agreement by the parties in this Docket, as a result of the stakeholder process meeting.

A Procedural Schedule has been Established.

On January 18, 2019, the Commission issued a Prefile Testimony Letter establishing the following procedural schedule for this Docket: Beulah Solar/Eastover Solar’s Direct Testimony and Exhibits on or before March 21, 2019; Direct Testimony and Exhibits of other parties on or before April 4, 2019; Rebuttal Testimony on or before April 11, 2019; and Surrebuttal Testimony on or before April 18, 2019. Given that the parties have not reached even the first milestone in this schedule, and Beulah Solar/Eastover Solar have not yet filed Beulah Solar/Eastover Solar’s Direct Testimony, the Company’s First and Second sets of Discovery Requests are premature.

**MOTION**

Beulah Solar/Eastover Solar hereby move the Public Service Commission of South Carolina (hereinafter as, "Commission"), pursuant to 10 S.C. Code Regs. Ann. 103-829,103-833 and 103-835; South Carolina Rule of Civil Procedure ("SCRCP") 26(c); and other applicable Rules and Regulations of this Commission, for a Protective Order in the above-referenced Docket.

This Motion is relevant to the Company’s First Set of Discovery Requests to Beulah Solar served and filed by the Company on February 5, 2019, the Company’s First Set of Discovery Requests to Eastover Solar served and filed by the Company on February 12, 2019, and the Company’s Second Set of Discovery Requests to Beulah Solar served and filed by the Company on February 18, 2019, including future and subsequent Discovery Requests to both, or either of, Beulah Solar/Eastover Solar , (hereinafter together as, the “Discovery Requests”).

Request to Toll Discovery Deadlines.

As discussed in more detail below, by and through this Motion, Beulah Solar/Eastover Solar request that this Commission toll the deadline for Beulah Solar/Eastover Solar to respond to the Company's Discovery Requests, because of Beulah Solar/Eastover Solar's Motion to Hold Docket in Abeyance. Beulah Solar/Eastover Solar's Motion to Hold Docket in Abeyance is incorporated herein by reference, as if set forth verbatim.

Grounds for Motion.

The grounds for this Motion are as follows:

*First*, as stated, Beulah Solar/Eastover Solar have a Motion to Hold Docket in Abeyance, that when granted will hold all Discovery Requests in abeyance. The stakeholder process described herein, may well lead to changes in the Company's curtailment language contained in its IAs, which language has not been approved by this Commission, and those changes will likely allow this Docket to be administratively closed resulting in great monetary savings of the parties and a saving of judicial economy of this Commission.

*Second*, the Company's Discovery Requests are overbroad, unduly burdensome, and clearly intended to harass Beulah Solar/Eastover Solar. They are vastly disproportionate to the needs of the case. The Motion for Modification is less than four pages long and sets forth four paragraphs worth of factual information. By contrast, Beulah Solar/Eastover Solar are now facing Discovery Requests spanning approximately 20 pages and comprising a combined 28 Requests for Admissions, 55 Interrogatories and 45 Requests for Production. These Requests include 59 Requests containing the word "all" and 15 Requests containing the words, "without limitation," each of which is objectionable on its face. The Company's Discovery Requests to Beulah Solar/Eastover Solar include a response time of 20 calendar days, (which in reality, computes to 14 work days).

The facts underlying Beulah Solar/Eastover Solar's Requests for Modifications are straightforward: Beulah Solar/Eastover Solar maintain that the curtailment provisions of their IAs with the Company create significant uncertainty about future project revenues, given the current uncertainty about how the Company will implement those provisions. The stakeholder process agreed to by the Company promises to resolve that uncertainty (assuming, of course, that the Company intends to participate in that process in good faith). The current revenue uncertainty compromises the ability to obtain financing for Milestone #1 payments, making it appropriate for the Commission to allow those payments to be deferred until the conclusion of the stakeholder process. The Company's "curtailment language" has not been approved by this Commission, and Beulah Solar/Eastover Solar are entitled to modification, pursuant to (i) provision 12.12 of the Company's IA, a right granted to Beulah Solar/Eastover Solar, by the Company and (ii) for seeking modification under S.C. Code Ann. Section 58-27-980, (1976, as amended), which gives this Commission the absolute right to modify the Company's IA.

The Company's Discovery Requests go far beyond these facts in a transparent attempt to punish Beulah Solar/Eastover Solar for seeking relief. The Company requests, for example, that Beulah Solar/Eastover Solar:

- "Describe in detail and with specificity each and every curtailment protocol You expect to be adopted and how each will impact the curtailment scenarios contained in the IA"
- "Produce all documents and communications relating to a potential sale or ownership transfer of Beulah"
- "Set forth an itemized statement of any and all damages You allege You sustained as a result of any act or omission of SCE&G" (Beulah/Eastover are not asserting claims for damages);
- Predict when the stakeholder process (which the Company *is a party to*) will be completed, as well as the date on which the IA amendment requested by Beulah Solar/Eastover Solar will occur;
- Identify how *other* solar developers will be impacted by the stakeholder process, and provide detailed information about the ownership and operation of Cypress Creek Renewables' other projects in South Carolina;

- Provide Beulah Solar/Eastover Solar's recent tax returns; and
- "Produce all financial statements for Beulah from January 1, 2018, to present including, but not limited to, ledgers, profit and loss statements, balance sheets, cash flow statements, and bank statements."

Given the irrelevance of the information and documents requested by the Company to the facts at issue here, the Company's Discovery Requests are harassing and unduly burdensome.

The Company's Discovery Requests are also harassing in that:

- The Company propounded two sets of Discovery Requests to Beulah Solar, the second of which the Company sent before the first responses were due, and both of which were due weeks before Beulah Solar's Direct Testimony deadline;
- The Company's Discovery Requests are boilerplate, cookie-cutter requests, seeking information about things such as damages (which Beulah Solar/Eastover Solar are not seeking); and
- The Company's Discovery Requests ask Beulah Solar/Eastover Solar to predict future events, such as the future of the stakeholder process and when the requested Interconnection Agreement amendments will take effect.

#### Beulah Solar/Eastover Solar Face Particularized Harm.

This Motion should be granted in that Beulah Solar/Eastover Solar will suffer particularized harm, in that Solar/Eastover Solar would otherwise be responding to overly broad, very expensive, unnecessary and burdensome discovery, the need for which will be vitiated by (i) Solar/Eastover Solar's pending Motion to Hold Docket in Abeyance (ii) the stakeholder process described hereinabove, and (iii) this Motion for Protective Order. Out of an abundance of caution, Solar/Eastover Solar will denominate Solar/Eastover Solar's objections to the Company's Discovery Requests by Beulah Solar/Eastover Solar's respective due dates.

## **CONCLUSION**

Based on the foregoing, and in light of Solar/Eastover Solar's pending Motion to Hold Docket in Abeyance and the stakeholder process described hereinabove, this Commission should issue the requested Order of Protection tolling any requirement that Solar/Eastover Solar respond to the Company's Discovery Requests, based on the reasons stated hereinabove. This Commission should grant the relief sought and such other and further relief as it may deem appropriate.

Respectfully Submitted,

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